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Dadbod Apparel LLC

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**Dadbod Apparel LLC**, a  
California limited liability  
company,

Plaintiff,

vs.

**Hildawn Design LLC**, an Ohio  
limited liability company;  
**Hilary D. Wertin**, an  
individual; and **Does 1**  
through 10,

Defendants.

Case No.

Complaint For:

- (1) Declaratory Judgment of Non-Infringement;
- (2) Intentional Interference with Prospective Economic Advantage; and
- (3) Violation of Sherman Act, Section 2

Demand For Jury Trial

1 Plaintiff Dadbod Apparel LLC for its complaint against defendants  
2 Hildawn Design LLC, Hilary D. Wertin, and Does 1 through 10, alleges as  
3 follows:

4  
5 **THE PARTIES**

6 1. Plaintiff Dadbod Apparel LLC (hereinafter, "Plaintiff") is a  
7 California limited liability company with a principal place of business at  
8 1556 Elk Ravine Way, Roseville, California 92661.

9 2. Defendant Hildawn Design LLC is, on information and belief,  
10 an Ohio limited liability company with a principal place of business at  
11 6334 Ewe Drive, Clinton, Ohio 44216.

12 3. Defendant Hilary D. Wertin is, on information and belief, the  
13 director and registered agent for defendant Hildawn Design LLC, is a  
14 resident of and has a place of business in the State of Ohio.

15 4. Plaintiff lacks the true names and capacities of defendants sued  
16 herein as Does 1 through 10, inclusive, and therefore sues these  
17 defendants by such fictitious names. Plaintiff will amend its complaint to  
18 allege the Does' true names and capacities when they have been  
19 ascertained.

20 5. Plaintiff is informed and believes that each of the Doe  
21 defendants is responsible in some manner for the events and happenings  
22 alleged herein, including damages. Hereinafter, the named defendants  
23 and the Doe defendants are collectively referred to as "Defendants."

24 6. Plaintiff is informed and believes that each of the Defendants  
25 was the agent or employee of each of the remaining Defendants and, at all  
26 relevant times herein, acted within the course and scope of such agency  
27 and/or employment.

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## JURISDICTION AND VENUE

7. This action is subject to this Court's jurisdiction pursuant to 15 U.S.C. § 1121(a) (action arising under the Lanham Act), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1338(a) (any act of congress relating to trademarks), 15 U.S.C. § 2 (monopolizing trade), and 28 U.S.C. § 1367(a) (supplemental jurisdiction).

8. This Court also has jurisdiction based upon 28 U.S.C. § 1332 (diversity and amount in controversy in excess of \$75,000, exclusive of interest and costs).

9. This Court has personal jurisdiction over Defendants because: 1) each Defendant or their respective agents are doing business in this district and/or purposely directing their activities towards this district; and 2) Plaintiff is informed and believes that a substantial part of the wrongful acts alleged herein occurred in interstate commerce, in the State of California, and in this district.

10. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)-(d) for this Court has personal jurisdiction over Defendants because: 1) each Defendant or their respective agents are doing business in this district and/or purposely directing their activities towards this district; and 2) Plaintiff is informed and believes that a substantial part of the wrongful acts alleged herein occurred in interstate commerce, in the State of California, and in this district.

## FACTUAL ALLEGATIONS

11. This dispute concerns trademark misuse, intentional interference, attempted monopolization of trade, and other wrongful acts regarding Defendants' purported enforcement of its GIRLDAD trademark.

1           12. Since 2017 Plaintiff has been actively engaged in the design,  
2 manufacture, advertising, distribution, and sale of apparel, including  
3 pants, shirts, hats, shorts, sweatshirts, jackets, and accessories.

4           13. Plaintiff is the owner of numerous trademarks, and the  
5 goodwill symbolized by its marks and the registrations thereof. To  
6 protect Plaintiff's investment in its development of products and  
7 goodwill, Plaintiff obtained numerous trademark registrations including  
8 specifically U.S. trademarks for DADBOD APPAREL®, registration no.  
9 6077397, DUMBBELLS, DEADLIFTS & DAUGHTERS®, registration nos.  
10 6496550 and 7138473, DAD VIBES®, registration no. 6427449, and KID  
11 VIBES®, registration no. 6708288 (collectively, the "DADBOD  
12 Trademarks").

13           14. Plaintiff uses the DADBOD Trademarks in the advertising and  
14 promotion of its apparel and accessories on its dadbodappare.com  
15 website as well as online vendors Amazon and Etsy. By virtue of  
16 advertising and promotional services, together with consumer acceptance  
17 and recognition, Plaintiff's DADBOD Trademarks identifies Plaintiff's  
18 apparel only and distinguishes it from apparel offered by others.  
19 Plaintiff's DADBOD Trademarks have thus become synonymous with  
20 Plaintiff and are valuable assets symbolizing Plaintiff, its high quality  
21 products, and its goodwill.

22           15. Through longstanding, extensive, and exclusive use, Plaintiff's  
23 DADBOD Trademarks are distinctive, and Plaintiff enjoys substantial  
24 commercial success. The marks are readily recognized by consumers of  
25 quality clothing products and are valuable assets of Plaintiff.

26           16. In or about April 2022, Plaintiff introduced a line of apparel and  
27 accessories bearing the purely ornamental and decorative slogan  
28 "Support Your Local Girl Dad" residing usually inside of a quadrilateral.

The line includes hats, shirts, sweatshirts, vinyl stickers, and flags:



17. At all times relevant to this complaint, Defendants are and have been acutely aware of Plaintiff's business and online s, including specifically the apparel and accessories bearing the purely ornamental and decorative slogan "Support Your Local Girl Dad" on its own website, Amazon, and Etsy.

18. On or about June 23, 2023, then counsel for Defendants sent a Cease and Desist letter to Plaintiff, asserting ownership in a GIRLDAD trademark, registration no. 5192792, and vaguely asserting that on its dadbodapparel.com website Plaintiff "market similar items using the GIRLDAD Trademark." See **Exhibit A** attached hereto and incorporated by reference herein.

19. On July 10, 2023, Plaintiff, through the undersigned counsel, responded to Defendant's letter, seeking clarification as to what use of the

1 “GIRLDAD” mark offended Plaintiff. See **Exhibit B** attached hereto and  
2 incorporated by reference herein.

3 20. On or about August 22, 2023, then counsel for Defendants  
4 responded and identified the allegedly offending use, “the parenthetical  
5 reference to ‘GIRL DAD’ when describing the goods being sold on the  
6 Dadbod Apparel website.” Defendants neither took issue with nor even  
7 mentioned Plaintiff’s purely ornamental and decorative slogan “Support  
8 Your Local Girl Dad” appearing on apparel and accessories. See **Exhibit**  
9 **C** attached hereto and incorporated by reference herein.

10 21. To appease Defendants, Plaintiff removed “(GIRL DAD)”  
11 references from its website and various online stores.

12 22. Thinking the matter resolved, Plaintiff focused on preparing for  
13 the 2023 holiday sales season, ensuring sufficient inventory was available  
14 for its Amazon and Etsy storefronts, including specifically apparel  
15 bearing the purely ornamental and decorative slogan “Support Your  
16 Local Girl Dad.”

17 23. Plaintiff is informed and believes, and thereon alleges, that  
18 being themselves vendors on Amazon and Etsy, Defendants are acutely  
19 aware of the commercial value of a successful holiday sales season.  
20 Defendants are also intimately aware of the negative impact allegations of  
21 intellectual property infringement can have on a vendor’s sales on  
22 Amazon and Etsy over the critical few weeks of a holiday season.

23 24. On or about November 13, 2023, Defendants initiated the first  
24 of several trademark infringement take-down actions against Plaintiff  
25 with Amazon and Etsy, asserting infringement of its GIRLDAD  
26 trademark. On or about December 15, 2023, Defendants initiated two  
27 take-down actions against Plaintiff on Etsy. On or about December 27,  
28 2023, Defendants initiated a take-down action against Plaintiff on



1 Amazon. On or about December 29, 2023, and again on January 4, 2024,  
2 Defendants initiated take-down actions against Plaintiff on Etsy.  
3 Defendants' take-down actions focused exclusively on Plaintiff's apparel  
4 bearing the purely ornamental and decorative slogan "Support Your  
5 Local Girl Dad." See **Exhibit D** attached hereto and incorporated by  
6 reference herein.

7 25. In early December 2023, Plaintiff's counsel reached out to  
8 Defendants' then counsel to inquire about the recent take-down actions to  
9 try and resolve the matter while the critical sales window in advance of  
10 Christmas remained open. Then counsel informed Plaintiff's counsel it  
11 has been replaced and Plaintiff reached out to Defendants' newly  
12 appointed counsel.

13 26. On December 15, 2023, Plaintiff's counsel and Defendants'  
14 newly appointed counsel spoke telephonically. During the  
15 teleconference, Plaintiff's counsel explained that the slogan "Support  
16 Your Local Girl Dad" appearing Plaintiff's goods would be perceived  
17 only as decoration and/or ornamentation, is not source-identifying,  
18 would not be perceived as a trademark, and therefore does not infringe  
19 Defendants' GIRLDAD mark.

20 27. Plaintiff is informed and believes, and thereon alleges, instead  
21 of addressing the matter Defendants new counsel feigned ignorance  
22 about the issues offering instead a hollow promise to follow up with  
23 Plaintiff's counsel after speaking with Defendants. Defendants then filed  
24 five of the six take-down notices after counsel spoke. *Id.*

25 28. Plaintiff is informed and believes, and thereon alleges, that  
26 since November 13, 2023, Defendants, have and continue to conspire to  
27 disrupt and frustrate Plaintiff's sales of goods bearing the purely  
28 ornamental and decorative slogan "Support Your Local Girl Dad" by

1 repeatedly submitting fraudulent trademark infringement notices on  
2 Amazon and Etsy concerning the alleged infringement of its GIRLDAD  
3 trademark.

4 29. In response to Defendants take-down notices, Amazon and  
5 Etsy removed from Plaintiff's storefronts all goods bearing the purely  
6 ornamental and decorative slogan "Support Your Local Girl Dad."

7 30. Plaintiff is informed and believes, and thereon alleges, that  
8 Defendants' trademark enforcement scheme is willful and calculated to  
9 damage Plaintiff's reputation with Amazon and Etsy and divert sales to  
10 Defendants that otherwise would have gone to Plaintiff.

11 31. Plaintiff is informed and believes, and thereon alleges, that  
12 Defendants, and each of them, have agreed among themselves to act, and  
13 have acted, in concert for the purpose of unfairly injuring, usurping, and  
14 appropriating to themselves Plaintiff's business, reputation, and goodwill  
15 in one or more of the following ways:

- 16 a. Adopting and implementing a fraudulent trademark  
17 enforcement scheme on Amazon and Etsy against  
18 Plaintiff concerning the alleged infringement of  
19 Defendants' GIRLDAD trademark; and
- 20 b. Continuing to assert its GIRLDAD trademark against  
21 Plaintiff's Amazon and Etsy stores, even after Plaintiff's  
22 notice that goods bearing the purely ornamental and  
23 decorative slogan "Support Your Local Girl Dad" do not  
24 constitute trademark infringement.

25 32. As a result of the actions described above, Plaintiff has lost and  
26 is at risk of losing further substantial business. The harm to Plaintiff's  
27 business cannot be adequately redressed by damages since Plaintiff's  
28 business reputation and the continuing value of the "Support Your Local



1 Girl Dad” slogan is jeopardized by Defendants’ acts. Further, the injury  
2 to Plaintiff’s reputation will continue to accrue unless and until  
3 Defendants are enjoined from enforcing the GIRLDAD mark and/or  
4 interfering with Plaintiff’s business relationships with Amazon and Etsy.  
5

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Judgment of Non-Infringement)**

8 33. Plaintiff repeats and incorporates by reference into this claim  
9 each of the preceding and following allegations of this complaint.

10 34. This is an action for a declaratory judgment and further relief  
11 against Defendants pursuant to 28 U.S.C. §§ 2201 and 2202.

12 35. Defendants have accused Plaintiff of trademark infringement  
13 pursuant to 15 U.S.C. §§ 1114 and 1125(a).

14 36. Plaintiff denies Defendants’ allegations of trademark  
15 infringement as set forth above.

16 37. Defendants’ allegations of infringement pose a threat to  
17 Plaintiff’s business and have and will continue to harm Plaintiff until such  
18 claims are resolved.

19 38. As a result of the foregoing, an actual case or controversy exists  
20 regarding Defendants’ allegations of trademark infringement.

21 39. Plaintiff has no adequate remedy at law and therefore seeks  
22 declaratory judgment pursuant to 28 U.S.C. §§ 2201–02 that Plaintiff does  
23 not and has not infringed Defendants’ GIRLDAD trademark, registration  
24 no. 5192792.

25 40. Plaintiff additionally seeks any further relief deemed  
26 appropriate by this Court pursuant to 28 U.S.C. § 2202.

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**SECOND CLAIM FOR RELIEF**

**(Intentional Interference with Prospective Economic Advantage)**

41. Plaintiff repeats and incorporates by reference into this claim each of the preceding and following allegations of this complaint.

42. A defendant intentionally interferes with a prospective economic advantage where a plaintiff has an existing economic relationship with a third party with the probability of future economic benefit to plaintiff, where the defendant has knowledge of that relationship, where the defendant engages in intentional acts designed to disrupt the relationship, actual disruption of the relationship occurs, and the plaintiff suffers economic harm because of defendant's acts.

43. Plaintiff has a preexisting economic relationship and prior dealings with Amazon and Etsy.

44. A probable future economic benefit to Plaintiff existed insofar as Amazon and Etsy allowed for the advertisement and sale Plaintiff's goods bearing the purely ornamental and decorative slogan "Support Your Local Girl Dad."

45. Defendants were aware of Plaintiff's relationship with Amazon and Etsy to the extent that on or about November 13, 2023, Defendants initiated with Amazon and Etsy the first of at least six trademark infringement take-down actions against Plaintiff, asserting infringement of Defendants' GIRLDAD trademark.

46. Defendants intentionally and maliciously sent the trademark infringement take-down notices to Amazon and Etsy with a clear intent at actual disruption of the economic relationship between Amazon and Plaintiff, and between Etsy and Plaintiff, by knowing Amazon and Etsy would immediately remove Plaintiff's goods bearing the purely ornamental and decorative slogan "Support Your Local Girl Dad" during

1 the critical holiday sales season.

2 47. As a result of Defendants' malicious acts, Plaintiff has been  
3 harmed. Plaintiff's full realization of its economic relationship with  
4 Amazon and Etsy and ability to market and sell goods bearing the purely  
5 ornamental and decorative slogan "Support Your Local Girl Dad" has  
6 been prohibited by the intentional interference and Plaintiff has been  
7 forced to engage legal services related to the allegations in the fraudulent  
8 notices.

9 48. The acts were carried out by Defendants in a malicious, willful,  
10 and oppressive manner with the intent to injure and damage Plaintiff,  
11 entitling Plaintiff to recover exemplary damages under California Civil  
12 Code § 3294. Defendants' decision to intentionally and maliciously send  
13 threatening correspondence to prospective economic relationships was  
14 done with the intent to injure Plaintiff.

15 49. Defendants' officers, directors, and managerial and supervisory  
16 employees participates in the unlawful conduct as alleged above or had  
17 actual knowledge that the above-alleged conduct was unlawful and  
18 nevertheless authorized and/or ratified the practices with conscious  
19 disregard of the rights and safety of Plaintiff.

### 20 21 **THIRD CLAIM FOR RELIEF**

#### 22 **(Violation of Sherman Act, Section 2)**

23 50. Plaintiff repeats and incorporates by reference into this claim  
24 each of the preceding and following allegations of this complaint.

25 51. Defendants, by virtue of their continued attempts to misuse the  
26 GIRLDAD trademark, have purposefully and intentionally attempted to  
27 obtain a monopoly in violation Section 2 of the Sherman Acts, 15 U.S.C. §  
28 2.

1           52. Plaintiff are competitors of Defendants in the apparel market in  
2 the United States. Plaintiff has been and is presently engaged in the  
3 design, manufacture, advertising, distribution, and sale of apparel and  
4 accessories bearing the purely ornamental and decorative slogan  
5 “Support Your Local Girl Dad.”

6           53. Defendants have made the improper attempt to enforce the  
7 GIRLDAD trademark to knowingly and intentionally eliminate, injure, or  
8 destroy competition in the United States for apparel and accessories  
9 merely bearing the terms “Girl” and “Dad.”

10           54. Defendants have raised the specter of a dangerous probability  
11 of success in driving out competing suppliers, distributors, and sellers in  
12 the domestic market for apparel and accessories merely bearing the terms  
13 “Girl” and “Dad,” thereby damaging, lessening, and injuring competition  
14 in that Defendants’ frivolous and baseless trademark enforcement is  
15 nothing more than economic coercion that will cause Plaintiff to cease  
16 doing business in the United States market.

17           55. Defendants’ illicit conduct has directly and proximately caused  
18 damage to Plaintiff in a total amount to be proved at trial, but in any  
19 event, not less than \$ 1 million. Said damages should be trebled pursuant  
20 to 15 U.S.C. § 15.

21  
22                                   **PRAYER FOR RELIEF**

23           Wherefore, Plaintiff prays for judgment against Defendants as  
24 follows:

25           1. Entering judgment that Plaintiff has not infringed the  
26 GIRLDAD trademark, registration no. 5192792;

27           2. Awarding Plaintiff general, compensatory, and consequential  
28 damages in a sum to be proven at trial, but in any event, not less than \$ 1

million;

3. Awarding Plaintiff treble damages pursuant to Title 15, United States Code;

4. Finding this to be an exceptional case and awarding Plaintiff reasonable attorneys' fees, costs, and expenses pursuant to 35 U.S.C. § 285 and pursuant to 15 U.S.C. § 15; and

5. Granting such other and further relief as it may deem just and proper.

### DEMAND FOR JURY TRIAL

Plaintiff Dadbod Apparel LLC requests a trial by jury on all claims and defenses so triable.

Date: January 16, 2024

GARVEY ADAM LLP

By: /s/ Joshua A. Schaul  
Joshua A. Schaul  
Attorneys for Plaintiff  
Dadbod Apparel LLC